IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2822 of 2007
Date of Decision:30.8.2007

Satnam Singh and others ...Appellants

Versus

Ujjagar Singh and others ...Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Pardeep Goyal, Advocate, for the appellants.

HEMANT GUPTA, J.

The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit for permanent injunction restraining the defendant from dispossessing the plaintiffs from the land measuring 1 bigha forcibly and illegally, was decreed.

It is the case of the plaintiffs that the land in dispute was purchased by Ramdasiya community of village Mohali Kalan, from the predecessor-in-interest of the defendant for discharge of water of their houses for a sum of Rs.280/-. Nand Kaur wife of Karam Singh, father of defendant Gurdev Singh, has executed a writing and thumb marked the same in the year 2017 B.K. But now the defendant is threatening to dispossess the plaintiffs and to alienate the suit land, which is not permissible and, therefore, the present suit for injunction was filed. The

defendant pointed out that earlier a suit was filed, which was decreed on 5.9.1995. It was held that the plaintiffs have no interest in the suit land.

In evidence, the writing Exhibit P.2 was produced, which pertains to 2017 Bikram Samwat. It is the said writing which has been interpreted by the Courts below. It was held by the learned trial Court that in earlier suit a Local Commissioner was appointed and directed to visit the spot and to report whether there is a Gair Mumkin Chhappar (Pond) existing on the spot. The report submitted by the Local Commissioner is Exhibit P.1. On the basis of the said report, it was found that the land in dispute is being used as Chhappar i.e. Pond, which is in possession of Ramdasiya community. The said finding was affirmed in appeal.

Learned counsel for the appellants has vehemently argued that the writing Exhibit P.2 is unregistered document and in respect of discharge of water from two wells. The said document cannot be extended to permit the members of Ramdasiya community to discharge the waste water from their houses to the aforesaid Pond.

In a suit for permanent injunction, the report of the Local Commissioner Exhibit P.1, has been referred to by the Courts below to hold that the land is being used as a Chhappar and for the discharge of waste water. The said fact is corroborated by the writing Exhibit P.2, wherein the predecessor-in-interest of the defendant has permitted Ramdasiya community to discharge the water from the two wells. Once, the waste water is to be discharged, whether it is from the two wells or from the houses, becomes irrelevant.

Concurrent findings of fact recorded by the Courts below are sought to be disputed by way of reappreciation of evidence. It

could not be pointed out that any evidence has been misread or not taken into consideration. I do not find any patent illegality or material irregularity in such findings recorded by the Courts below, which may give rise to any substantial question of law in the second appeal.

Hence, the present appeal is dismissed.

30-08-2007 (HEMANT GUPTA)
ds JUDGE